

AMENDED IN SENATE APRIL 28, 2004

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1352

Introduced by Senators Romero and Speier

February 18, 2004

An act to amend ~~Section 6126.4 of~~ *Sections 6126.3 and 6126.5 of*, and to add *Sections 6131 and 6132 to*, and to repeal *Section 6126.6 of*, the Penal Code, relating to the Inspector General.

LEGISLATIVE COUNSEL'S DIGEST

SB 1352, as amended, Romero. Inspector General: Adult and Youth Correctional Agency.

Existing law specifies the duties and responsibilities of the Inspector General in connection with departments under the authority of the Youth and Adult Correctional Agency.

~~This bill would require the Inspector General to report semi-annually to the Governor and the Legislature a summary of investigations and audits, as specified. The bill would also require the Inspector General to make the summary public, and to make the investigative reports and audits public, as specified.~~

This bill would revise and recast provisions relating to classifying what materials in connection with investigations and audits by the Inspector General are public records.

Existing law authorized access by the Inspector General to specified records for the purpose of conducting an audit or investigation. Failure or refusal to permit access, examination, or reproduction of those records is a misdemeanor.

This bill would expand access by the Inspector General to certain records, as specified. The bill would also authorize the Inspector General to redact certain identifying personal information, as specified.

By expanding the access of the Inspector General to certain records, where the denial of access is a crime, this bill would expand the scope of an existing crime, and thereby impose a state-mandated local program.

Existing law provides that it is a misdemeanor for the Inspector General or any employee of the Inspector General to release any information received pursuant to these provisions, except as provided by these provisions, or to release information that is otherwise prohibited by law from being disclosed.

This bill would repeal those provisions.

The bill would require disclosure of completed audit or investigation reports by the Inspector General, and specify the conditions of those disclosures.

The bill would require annual and other regular reports by the Inspector General, to the Governor and the Legislature, and others, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 6126.4 of the Penal Code is amended to~~
- 2 *SECTION 1. Section 6126.3 of the Penal Code is amended to*
- 3 *read:*
- 4 6126.3. (a) The Inspector General shall not destroy any
- 5 papers or memoranda used to support a completed audit within
- 6 three years after a report is released. ~~All~~
- 7 (b) *Except as provided in subdivision (d), all books, papers,*
- 8 *records, and correspondence of the office pertaining to its work are*
- 9 *public records subject to Chapter 3.5 (commencing with Section*

6250) of Division 7 of Title 1 of the Government Code and shall be filed at any of the regularly maintained offices of the Inspector General, ~~except that none of the following items, or papers of which these items are a part, shall be released to the public by the Inspector General or his or her employees and shall not be subject to discovery pursuant to any provision of Title 3 (commencing with Section 1981) of Part 4 of the Code of Civil Procedure in any manner:~~

~~(a) Personal papers and correspondence of any person receiving assistance from the Inspector General when that person requested in writing that his or her papers and correspondence be kept private and confidential. Those papers and correspondence shall become public records if the written request is withdrawn or upon the order of the Inspector General.~~

~~(b) Papers, correspondence, memoranda, or any information pertaining to any audit or investigation not completed.~~

~~(c) Papers, correspondence, or memoranda pertaining to any audit or investigation that has been completed, if the papers, correspondence, or memoranda are not used in support of any report resulting from the audit or investigation.~~

(c) The following books, papers, records, and correspondence of the Office of the Inspector General pertaining to its work are not public records subject to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, nor shall they be subject to discovery pursuant to any provision of Title 3 (commencing with Section 1985) of Part 4 of the Code of Civil Procedure in any manner:

(1) All reports, papers, correspondence, memoranda, electronic communications, or other documents that are otherwise exempt from disclosure pursuant to the provisions of subdivision (d) of Section 6126.5, subdivision (c) of Section 6128, subdivision (a) or (b) of Section 6131, or all other applicable laws regarding confidentiality, including, but not limited to, the California Public Records Act, the Public Safety Officers' Procedural Bill of Rights, the Information Practices Act of 1977, the Confidentiality of Medical Information Act of 1977, and the provisions of Section 832.7, relating to the disposition notification for complaints against peace officers.

1 (2) Any papers, correspondence, memoranda, electronic
2 communications, or other documents pertaining to any audit or
3 investigation that has not been completed.

4 (3) Any papers, correspondence, memoranda, electronic
5 communications, or other documents pertaining to internal
6 discussions between the Inspector General and his or her staff, or
7 between staff members of the Inspector General, or any personal
8 notes of the Inspector General or his or her staff.

9 (4) All identifying information, and any personal papers or
10 correspondence from any person requesting assistance from the
11 Inspector General, except in those cases where the Inspector
12 General determines that disclosure of the information is necessary
13 in the interests of justice.

14 SEC. 2. Section 6126.5 of the Penal Code is amended to read:

15 6126.5. (a) Notwithstanding any other provision of law, the
16 Inspector General during regular business hours or at any other
17 time determined necessary by the Inspector General, shall have
18 access to and authority to examine and reproduce, any and all
19 books, accounts, reports, vouchers, correspondence files,
20 documents, and other records, and to examine the bank accounts,
21 money, or other property, of any entity defined in Section 6126 for
22 any audit or investigation. Any officer or employee of any agency
23 or entity having these records or property in his or her possession
24 or under his or her control shall permit access to, and examination
25 and reproduction thereof consistent with the provisions of this
26 section, upon the request of the Inspector General or his or her
27 authorized representative.

28 (b) ~~For the purposes of access, examination, and reproduction~~
29 ~~as provided in subdivision (a), an authorized representative of the~~
30 ~~Inspector General is an employee or officer of the agency or public~~
31 ~~entity involved and is subject to any limitations on release of the~~
32 ~~information as may apply to an employee or officer of the agency~~
33 ~~or public entity.~~ For the purpose of conducting any audit or
34 investigation, the Inspector General or his or her authorized
35 representative shall have access to the records and property of any
36 public or private entity or person subject to review or regulation
37 by the public agency or public entity being audited or investigated
38 to the same extent that employees or officers of that agency or
39 public entity have access. No provision of law or any
40 Memorandum of Understanding or any other agreement entered

1 *into between the employing entity and the employee or the*
 2 *employee's representative providing for the confidentiality or*
 3 *privilege of any records or property shall prevent disclosure*
 4 *pursuant to subdivision (a), unless the provision specifically refers*
 5 *to and precludes access and examination and reproduction*
 6 *pursuant to subdivision (a).*

7 (c) Any officer or person who fails or refuses to permit access,
 8 examination, or reproduction, as required by this section, is guilty
 9 of a misdemeanor.

10 (d) The Inspector General may require any employee of those
 11 entities specified in Section 6126 to be interviewed on a
 12 confidential basis. Any employee requested to be interviewed
 13 shall comply and shall have time afforded by the appointing
 14 authority for the purpose of an interview with the Inspector
 15 General or his or her designee. ~~Any record created by an interview~~
 16 ~~shall be deemed confidential for use by the Inspector General and~~
 17 ~~the Secretary of the Youth and Adult Correctional Agency only.~~
 18 *The Inspector General shall have the discretion to redact the name*
 19 *or other identifying information of any person interviewed from*
 20 *any report issued by the Inspector General, in those cases required*
 21 *by confidentiality laws or where the failure to redact the*
 22 *information may hinder prosecution or an action in a criminal,*
 23 *civil, or administrative proceeding, or where the Inspector*
 24 *General determines that disclosure of the information is not in the*
 25 *interests of justice.* It is not the purpose of these communications
 26 to address disciplinary action or grievance procedures that may
 27 routinely occur. If it appears that the facts of the case could lead
 28 to punitive action, the Inspector General shall be subject to the
 29 ~~provisions of the Public Safety Officers Procedural Bill of Rights~~
 30 ~~Act (Section 3300 of the Government Code et seq.)~~ *Section 3303*
 31 *of the Government Code* as if the Inspector General were the
 32 employer, *except that the Inspector General shall not be subject*
 33 *to the provisions of any Memorandum of Understanding or other*
 34 *agreement entered into between the employing entity and the*
 35 *employee or the employee's representative that is in conflict with,*
 36 *or adds to the requirements of, Section 3303 of the Government*
 37 *Code.*

38 SEC. 3. *Section 6126.6 of the Penal Code is repealed.*

39 ~~6126.6.—It is a misdemeanor for the Inspector General or any~~
 40 ~~employee of the Inspector General to release any information~~

~~received pursuant to this chapter except as provided by this chapter, or that is otherwise prohibited by law from being disclosed.~~

SEC. 4. Section 6131 is added to the Penal Code, to read:

6131. (a) Upon the completion of any audit conducted by the Inspector General, he or she shall prepare a written report, which shall be disclosed, along with all underlying materials the Inspector General deems appropriate, to the Governor, the Secretary of the Youth and Adult Correctional Agency, the appropriate director, chair, or law enforcement agency, and the Legislature. Copies of all those written reports shall be posted on the Inspector General's Web site within 30 days of being disclosed to the above-listed entities or persons.

(b) Upon the completion of any investigation conducted by the Inspector General, he or she shall prepare a complete written report, which shall be disclosed, along with all underlying investigative materials the Inspector General deems appropriate, to the Governor, the Secretary of the Youth and Adult Correctional Agency, and the appropriate director, chair, or law enforcement agency.

(c) Upon the completion of any investigation conducted by the Inspector General, he or she shall also prepare a public investigative report. The public investigative report shall differ from the complete investigative report only in the respect that the Inspector General shall have the discretion to redact the names of individuals, specific locations, or other facts that, if not redacted, might hinder prosecution related to the investigation, or where disclosure of the information is otherwise prohibited by law, and to decline to produce any of the underlying investigative materials. In a case where allegations were deemed to be unfounded, all applicable identifying information shall be redacted. The public investigative report shall be made public as follows:

(1) In those cases where an investigation is referred only for disciplinary action before the State Personnel Board or for other administrative proceedings, the employing entity shall, within 10 days of receipt of the State Personnel Board's order rendered in other administrative proceedings, provide the Inspector General with a copy of the order. The Inspector General shall, within 10 days of this notification, post the public investigative report on its Web site and provide copies of the report to the Legislature, as well

1 as to any complaining employee and any employee who was the
2 subject of the investigation.

3 (2) In those cases where the employing entity and the employee
4 against whom disciplinary action has been taken enter into a
5 settlement agreement concerning the disciplinary action, the
6 employing entity shall, within 10 days of the settlement agreement
7 becoming final, notify the Inspector General in writing of that fact
8 and shall describe what disciplinary action, if any, was ultimately
9 imposed on the employee. The Inspector General shall, within 10
10 days of this notification, post the public investigative report on its
11 Web site and provide copies of the report to the Legislature, as well
12 as to any complaining employee and any employee who was the
13 subject of the investigation.

14 (3) In those cases where the employing entity declines to pursue
15 disciplinary action against an employee, the employing entity
16 shall, within 30 days of receipt of the investigative report, notify the
17 Inspector General in writing of its decision not to pursue
18 disciplinary action, setting forth the reasons for its decision. The
19 Inspector General shall, within 10 days of this notification, post
20 the public investigative report on its Web site and provide copies
21 of the report to the Legislature, as well as to any complaining
22 employee and any employee who was the subject of the
23 investigation.

24 (4) In those cases where an investigation has been referred for
25 possible criminal prosecution, and the applicable local law
26 enforcement agency or the Attorney General has decided to
27 commence criminal proceedings against an employee, the report
28 shall be made public at a time deemed appropriate by the Inspector
29 General after consultation with the local law enforcement agency
30 or the Attorney General, but in all cases no later than within 30
31 days of a verdict having been rendered in the criminal proceedings.
32 The Inspector General shall thereafter post the public
33 investigative report on its Web site and provide copies of the report
34 to the Legislature, as well as to any complaining employee and any
35 employee who was the subject of the investigation.

36 (5) In those cases where the local law enforcement agency or
37 the Attorney General declines to commence criminal proceedings
38 against an employee, the local law enforcement agency or the
39 Attorney General shall, within 30 days of reaching that decision,
40 notify the Inspector General of that fact. The Inspector General

1 shall, within 10 days of this notification, post the public
2 investigative report on its Web site and provide copies of the report
3 to the Legislature, as well as to any complaining employee and any
4 employee who was the subject of the investigation.

5 (6) In those cases where an investigation has been referred for
6 neither disciplinary action or other administrative proceedings,
7 nor for criminal prosecution, the Inspector General shall, within
8 30 days of issuing the complete investigative report, post the public
9 investigative report on its Web site and provide copies of the report
10 to the Legislature, as well as to any complaining employee and any
11 employee who was the subject of the investigation.

12 SEC. 5. Section 6132 is added to the Penal Code, to read:

13 6132. (a) The Inspector General shall report annually to the
14 Governor and the Legislature a summary of his or her
15 investigations and audits. The summary shall be posted on the
16 Inspector General's Web site and otherwise made available to the
17 public upon its release to the Governor and the Legislature. The
18 summary shall include, but not be limited to, significant problems
19 discovered by the Inspector General, and whether
20 recommendations the Inspector General has made through audits
21 and investigations have been implemented by the subject agency,
22 department, or board.

23 (b) The Inspector General's Office of Independent Review shall
24 issue regular, and in no case less than semi-annual, reports to the
25 Governor and the Legislature summarizing its findings concerning
26 its oversight of Youth and Adult Correctional Agency disciplinary
27 cases.

28 SEC. 6. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.

37 read:

38 ~~6126.4.—(a) Except as provided in subdivision (b), it is a~~
39 ~~misdemeanor for the Inspector General or any employee or former~~
40 ~~employee of the Inspector General to divulge or make known in~~

1 ~~any manner not expressly permitted by law to any person not~~
2 ~~employed by the Inspector General any particulars of any record,~~
3 ~~document, or information the disclosure of which is restricted by~~
4 ~~law from release to the public. This prohibition is also applicable~~
5 ~~to any person or business entity that is contracting with or has~~
6 ~~contracted with the Inspector General and to the employees and~~
7 ~~former employees of that person or business entity or the~~
8 ~~employees of any state agency or public entity that has assisted the~~
9 ~~Inspector General in the course of any audit or investigation or that~~
10 ~~has been furnished a draft copy of any report for comment or~~
11 ~~review.~~

12 ~~(b) There Inspector General shall report semi-annually to the~~
13 ~~Governor and the Legislature a summary of his or her~~
14 ~~investigations and audits. The summary shall be posted on the Web~~
15 ~~site of the office of the Inspector General and otherwise made~~
16 ~~available to the public upon its release to the Governor and the~~
17 ~~Legislature. The summary shall include, but not be limited to, the~~
18 ~~number of investigations and audits conducted within the report's~~
19 ~~timeframe, the number of cases referred to law enforcement~~
20 ~~agencies for criminal prosecution, the number of its referrals that~~
21 ~~are being prosecuted, the number of cases referred to hiring~~
22 ~~authorities for administrative processing, a summary of potential~~
23 ~~cost savings through the correction of inefficient or wasteful~~
24 ~~practices it has identified in audits, and recommendations it has~~
25 ~~made through audits and investigations that have not been~~
26 ~~implemented by the subject agency or department.~~

27 ~~(c) Investigative reports and audits conducted by the office of~~
28 ~~the Inspector General shall be posted on the Web site of the office~~
29 ~~and otherwise made available to the public upon their release to the~~
30 ~~Governor, the subject agency, or the Legislature with the following~~
31 ~~conditions and exceptions:~~

32 ~~(1) The office shall redact the names and other identifying~~
33 ~~information of subjects in investigations that have been referred to~~
34 ~~a law enforcement agency for prosecution.~~

35 ~~(2) The office shall redact names and other identifying~~
36 ~~information of subjects of investigations where allegations have~~
37 ~~been determined to be unfounded or not sustained.~~